

STATE OF WISCONSIN
SUPREME COURT

Case No. 99-3297-OA

WISCONSIN PROFESSIONAL POLICE ASSOCIATION, INC.,
JOHN CHAREWICZ, DAVID MAHONEY, SUSAN ARMAGOST,
STEVEN URSO, and STATE ENGINEERING ASSOCIATION, by
its President, THOMAS H. MILLER, DAVID BUSCHKOPF,
ROSS JOHNSON, MELVIN SENSENBRENNER, BERNARD KRANZ,
and THOMAS H. MILLER,

Petitioners,

v.

GEORGE LIGHTBOURN, Secretary of the Wisconsin Department
of Administration, JACK C. VOIGHT, Wisconsin State Treasurer,
WISCONSIN EDUCATION ASSOCIATION COUNCIL, by its
President TERRY CRANEY and its Vice-President, STAN JOHNSON,
and DONALD KRAHN, MARGARET GUERTLER, GERALD MARTIN,
and PHYLLIS POPE,

Respondents.

RESPONSE OF PETITIONERS WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, INC., JOHN CHAREWICZ, DAVID MAHONEY,
SUSAN ARMAGOST AND STEVEN URSO
TO WEAC'S MOTION FOR INTERIM RELIEF PENDING FINAL RESOLUTION
BY THE COURT

Respondents Wisconsin Education Association Council, et al., (WEAC) has asked this Court to partially dissolve the injunction barring implementation of the provisions of 1999 Wisconsin Act 11 (Act 11 or the Act). In effect, WEAC seeks an Order implementing four (4) of the twenty-nine (29) sections of Act 11. Petitioners Wisconsin Professional Police Association, Inc., John Charewicz, David Mahoney, Susan Armagost and Steven Urso (WPPA), do not oppose what WEAC

attempts to do in theory, however, Petitioners view what WEAC seeks to be problematic from a practical standpoint.

In the primary briefs filed in this case in July and August 2000, the parties briefed the question of severability as it applied to removing the challenged portions of Act 11 from the balance of Act 11, resulting in the implementation of the balance of Act 11. In contrast, in its Motion for Interim Relief, WEAC asks the Court to put four provisions of Act 11 into effect without the remaining provisions, which include both challenged and unchallenged sections. We shall refer to this request as one for reverse severance. While WPPA continues to assert that the challenged provisions of Act 11 are severable from the balance of the Act, it is unclear whether the twenty-five (25) sections which WEAC seeks to at least temporarily sever from implementation, through its request for reverse severance, can meet the same criteria.

As briefed more fully in WPPA's July 7, 2000 Brief, the general rule is that statutory provisions are severable. Wis. Stat. § 990.001(11). Two factors, however, must be considered beyond this general rule: the intent of the legislature and the viability of the severed (remaining) portion standing alone. *Burlington Northern, Inc. v. Superior*, 131 Wis. 2d 564, 579-80, 388 N.W.2d 916, 923 (1986), *cert. denied*, *LaFollette v. Burlington N. R. Co.*, 479 U.S. 1034 (1987).

WPPA questions whether Sections 12, 14, 25 and 26 can stand alone if implemented without the other non-challenged portions of Act 11. For instance, Section 12 creates a new statutory subsection, Wis. Stat. § 40.04(4)(a)2g. Wisconsin Statute § 40.04(4)(a), which Act 11 does not seek to change, provides that an employee accumulation reserve, within which a separate account shall be maintained for each participant, shall be maintained within the fund and: with the implementation of Section 12, under subsection 2g, credited as of each December 31, with interest

on the prior year=s closing balance at the **effective rate** on all employee required contribution accumulations in the fixed annuity division for participants who are participating employees on or after the effective date of this subdivision. . . .@ (Emphasis added). However, Wis. Stat. '40.04(4)(a)2 currently provides that the interest credit Aon the prior year=s closing balance [shall be] at the **assumed benefit rate** on all employee required contribution accumulations in the fixed annuity division for participants who are participating employees after December 31, 1984.@ (Emphasis added). Section 11 of Act 11 would add to the end of Wis. Stat. '40.04(4)(a)2 language which would confine the applicability of that section to employees who terminated covered employment before the effective date of Section 11.

WEAC does not seek to have Section 11 of the Act implemented, yet it is clear from the language of Sections 11 and 12 of Act 11 that the legislature intended those two sections to be effective on the same date. Otherwise, there would be two irreconcilable statutes (Wis. Stats. '40.04(4)(a)2 and '40.04(4)(a)2g) ordering two different interest rates (assumed benefit rate and effective rate, respectively) for the same group of people: participants in the fixed annuity division who are participating employees after December 31, 1984. Furthermore, it is apparent from this illustration that Section 12 does not viably stand alone without at least one other section of Act 11. These same problems may also exist with regard to the other three Sections which WEAC asks this Court to free from the current injunction.

While WPPA believes WEAC=s desire to obtain implementation of certain non-challenged aspects of Act 11 is laudable, WPPA fears that the method proposed may result in further problems within and challenges to the Wisconsin Retirement System. Therefore, WPPA urges this Court to issue its final resolution in this suit, voiding and severing the challenged provisions, and allowing

the remainder of Act 11 to be implemented, including Sections 12, 14, 25 and 26, once and for all.

Dated this 27th day of December, 2000.

Respectfully submitted,

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